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December 13, 2016

Via ECF

Honorable Michael A. Hammer, U.S.M.J
United States District Court
District of New Jersey
U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: **Ha, et al. v. Baumgart Cafe of Livingston, et al.**
Case No.: 2:15-cv-05530-ES-MAH

Dear Honorable Judge Hammer:

This office represents Defendants Baumgart's Edgewater Corp. ("Baumgart's Edgewater") and Leung Fong Ho ("Ho")(collectively, "Edgewater Defendants"). We write to supplement our response to Plaintiffs' letters dated December 9, 2016 and December 10, 2016 (ECF Doc. Nos. 49 and 51), requesting that Plaintiffs should be allowed to file their motion for conditional certification more than two weeks late.

On December 9, 2016, Lina M. Franco, Esq., submitted a letter informing the Court that due to a family emergency in Mexico City, she was forced to leave the country (ECF Doc. 49). She included a copy of her itinerary as Exhibit A. As stated by Co-Defendants' counsel, Douglas Weiner, Esq., this itinerary reflects the incorrect date of Thursday, November 21, 2016, as the departure date for Ms. Franco's flight, when the date on Thursday of that week was the 24th. The itinerary indicates Ms. Franco's trip to Mexico City was from November 21, 2016 through December 8, 2016.

Plaintiffs' other attorney, John Troy, Esq. also submitted a letter to this Court dated December 10, 2016. In his letter, he states that on Thursday, December 8, 2016, his office received communications from Attorney Franco indicating she had just returned from a family emergency and had been unable to check any emails during her time away, which he clarified was from November 21, 2016 through December 8, 2016.

This office then found Attorney Franco's website, which contains a link to her Instagram account. Through viewing the public Instagram accounts of Attorney Franco and J.E. Challinor Stillman, her traveling companion, it becomes obvious that Plaintiffs' counsels are blatantly lying about Attorney Franco's trip to shamefully contrive a family emergency to excuse their failure to timely file the motion for conditional certification.

The two post photos from October 28, 2016 through November 5, 2016, indicating that they are traveling in Mexico and Cuba. Please see Sharma Declaration attached hereto. Beginning November 6, 2016, the pair posts photos from various locations in New York, indicating they returned from their travels abroad. *Id.* These New York posts continue until between December 2, 2016 and December 3, 2016.

Specifically, on November 24, 2016, *after* Attorney Franco allegedly flew to Mexico City for her family emergency, Attorney Franco posted a picture to Instagram indicating she was eating Thanksgiving dinner. The photo indicates it was taken in the East Village, in Manhattan, New York. *Id.* She also posts a photo of a speaker at an event she attended on December 1, 2016, at the Museum of Modern Art, in Manhattan, New York. *Id.*

Following the New York posts, Attorney Franco then posts on December 3, 2016, in which she posts a picture of her laptop before a pool, with the caption reading, "Not a bad place to work. Not bad at all #Miami." *Id.* The photo was taken in Miami, Florida. Ms. Franco continues to post photos in Florida until December 4, 2016. *Id.*

In total, these pictures show that Attorney Franco did, in fact, spend some time in Mexico. However, the photos show that not only was she not there between November 21, 2016 and December 9, 2016 for a family emergency, but also that she returned from her travels, and remained in New York until December 2, 2016, when she flew to Miami. Plaintiffs' assertions that Attorney Franco was out of the country and had no access to her email are simply incorrect. The photos indicate that not only was Attorney Franco in the country, but also her December 3, 2016 photo clearly indicates she had her laptop and was able to work. Plaintiffs have no excuse for having failed to file their motion in a timely fashion.

Based on the foregoing, it is clear that Plaintiffs' counsels have fabricated an emergency to excuse the fact that they failed to file their motion on time, despite having six weeks to do so from the date of the Court's Order. It is also apparent that Plaintiffs' counsels have gone to an extraordinary length to mislead this Court, and should not be rewarded for their disrespect of this Court and the adversarial practice, by being allowed to file their motion to conditionally certify. For these reasons, Plaintiffs' request must be denied in its entirety, and Plaintiffs' motion for conditional certification must be stricken.

Respectfully submitted,

/s/Benjamin B. Xue
Benjamin B. Xue

CC.: Lina M. Franco, Esq. (via ECF)
John Troy, Esq. (via ECF)
Douglas Weiner, Esq. (via ECF)
S.M. Chris Franzblau, Esq. (via ECF)